

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALBERT MEDINA,

Plaintiff,

v.

Civ. No. 03-0993 RLP/ACT

MOLYCORP, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on Defendant's Motion to Dismiss. This action was initially filed in the First Judicial District Court, County of Santa Fe, State of New Mexico and was removed to this court on the basis of federal question jurisdiction. Specifically, Defendant asserted that although the complaint listed only state law claims, Plaintiff in reality was seeking benefits under an employee pension benefit plan governed by the Employment Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA").

Defendant then filed its Motion to Dismiss. In his Response [Doc. 15], Plaintiff conceded that his claim was governed by ERISA. He requested leave to file an amended complaint to conform with 29 U.S.C. 1132(A) & (B). In its Reply [Doc. 19], Defendant asserted that it would be futile for Plaintiff to amend his complaint because he would be denied benefits under the specific provisions of the applicable retirement plan.


The court has limited information before it; merely the parties' arguments and the documents attached to the complaint and the parties' submissions. It appears that at least one of the contractual provisions Defendant relies upon is ambiguous. Defendant asserts

that a plan administrator's denial of benefits may only be overturned if that ruling is arbitrary or capricious. Nevertheless, the Tenth Circuit Court of Appeals has ruled that the deference given a plan administrator's ruling depends upon several factors, including a conflict of interest. See, e.g., *Pitman v. Blue Cross and Blue Shield of Oklahoma*, 217 F.3d 1291 (10th Cir. 2000); *Kimber v. Thiokol Corp.*, 196 F.3d 1092 (10th Cir. 1999); *Semtner v. Group Health Service of Okla., Inc.*, 129 F.3d 1390 (10th Cir. 1997). Because that type of determination cannot be made at this juncture, the court denies Defendant's Motion to Dismiss and grants Plaintiff's request for leave to file an amended complaint.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss [Doc. 10] is denied; and

IT IS FURTHER ORDERED that Plaintiff shall have until **January 5, 2004** to file an amended complaint.

IT IS SO ORDERED.



Richard L. Puglisi
United States Magistrate Judge
(sitting by designation)

For the Plaintiff: Samuel M. Herrera, Esq.

For the Defendant: Thomas L. Stahl, Esq.